

TAB 18

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

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THE COMMONWEALTH OF MASSACHUSETTS,)	CIVIL ACTION NO.
Plaintiff,)	03-CV-11865-PBS
)	
vs.)	
)	VIDEOTAPED
MYLAN LABORATORIES, INC.; BARR)	DEPOSITION OF
LABORATORIES, INC.; DURAMED)	LESLI PAOLETTI
PHARMACEUTICALS, INC.; IVAX)	
CORPORATION; WARRICK)	
PHARMACEUTICALS CORPORATION;)	New York,
WATSON PHARMACEUTICALS, INC.;)	New York
SCHEIN PHARMACEUTICAL, INC.; TEVA)	July 26, 2007
PHARMACEUTICALS USA, INC.; PAR)	
PHARMACEUTICAL, INC.; DEY, INC.;)	
ETHEX CORPORATION; PUREPAC)	
PHARMACEUTICAL CO.; and ROXANE)	Reported By:
LABORATORIES, INC.,)	CATHI IRISH,
Defendants.)	RPR, CLVS

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202-220-4158

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<p style="text-align: right;">Page 14</p> <p>1 ipratropium bromide?</p> <p>2 A. Yes.</p> <p>3 Q. So except for the Roxicodone, you had</p> <p>4 responsibility for all the products that are at</p> <p>5 issue in this litigation, is that correct, or at</p> <p>6 least the ones I just mentioned?</p> <p>7 A. The ones you mentioned, yes.</p> <p>8 Q. How do your duties currently as the</p> <p>9 associate director of marketing differ from the</p> <p>10 duties you had as a senior product manager?</p> <p>11 A. They don't.</p> <p>12 Q. Okay. So in essence, your duties and</p> <p>13 responsibilities from at least the time period</p> <p>14 that you became -- that you were a product</p> <p>15 manager until today were essentially the same?</p> <p>16 A. Yes.</p> <p>17 Q. Is that correct? When did you become</p> <p>18 product manager?</p> <p>19 A. January of 2002.</p> <p>20 Q. And prior to that time, what were your</p> <p>21 duties and responsibilities?</p> <p>22 A. I still had responsibility for the --</p>	<p style="text-align: right;">Page 16</p> <p>1 involved some between '98 when I started working</p> <p>2 for Judy and 2002 -- 2003 when I started working</p> <p>3 directly for Paul Kersten in the capacity of</p> <p>4 product manager.</p> <p>5 BY MR. HEIDLAGE:</p> <p>6 Q. Let me show you a document which has</p> <p>7 been marked as Exhibit Waterer 081 in Ms.</p> <p>8 Waterer's deposition and ask you if that's a</p> <p>9 document that you've seen before.</p> <p>10 A. Yes.</p> <p>11 Q. Is it a document that you prepared?</p> <p>12 A. No.</p> <p>13 Q. Do you know who prepared it?</p> <p>14 A. No.</p> <p>15 Q. Did you prepare any of the information</p> <p>16 that is contained in Exhibit Waterer 081?</p> <p>17 A. Yes.</p> <p>18 Q. And what information did you prepare?</p> <p>19 A. Judy Waterer and I both prepared</p> <p>20 jointly some of these tables on pages 2, 3 and 4.</p> <p>21 Q. Okay. Just for the record, can you</p> <p>22 describe what your role was in preparing the</p>
<p style="text-align: right;">Page 15</p> <p>1 the same group of products, but to a slightly</p> <p>2 lesser -- I would say slightly lesser authority.</p> <p>3 Q. Is that because at the time that you</p> <p>4 were reporting to Ms. Waterer?</p> <p>5 A. Correct.</p> <p>6 Q. Is it fair to say that the types of</p> <p>7 functions that you carried out and</p> <p>8 responsibilities that you carried out were</p> <p>9 essentially the same, except that you were</p> <p>10 working under the supervision of Ms. Waterer?</p> <p>11 MR. REALE: Objection to form.</p> <p>12 THE WITNESS: For what length of time?</p> <p>13 MR. HEIDLAGE: As the -- prior to the</p> <p>14 time that you became product manager.</p> <p>15 MR. REALE: Same objection.</p> <p>16 THE WITNESS: I think they probably</p> <p>17 changed from the time I initially started working</p> <p>18 -- prior to working for Judy, I worked in other</p> <p>19 departments, so there's a difference in those</p> <p>20 positions and the responsibilities I had while I</p> <p>21 was working for Judy.</p> <p>22 I think the responsibilities may have</p>	<p style="text-align: right;">Page 17</p> <p>1 tables on pages 2, 3 and 4 of Exhibit Waterer</p> <p>2 081?</p> <p>3 A. Well, Judy and I both did it together</p> <p>4 digging through files, both electronic and</p> <p>5 written, to research the information that was</p> <p>6 ultimately -- we ultimately compiled and put into</p> <p>7 the document.</p> <p>8 Q. Now when there was a document that you</p> <p>9 located that -- and from which you took some of</p> <p>10 the information that went into one of these</p> <p>11 tables, did you make a copy of that document?</p> <p>12 A. Yes.</p> <p>13 Q. What did you do with the copies of</p> <p>14 those documents?</p> <p>15 A. We put them in a file, a work file, so</p> <p>16 that we could reference them later if we needed</p> <p>17 to.</p> <p>18 Q. And do you know where that file is</p> <p>19 today?</p> <p>20 A. I don't.</p> <p>21 Q. What did you do with the file?</p> <p>22 A. Actually, Judy had possession of the</p>

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<p style="text-align: right;">Page 106</p> <p>1 the prompt payment terms impact. And then if you</p> <p>2 look at page 4, the grids for lithium carbonate</p> <p>3 capsules for the date March 16th, 1998, there's a</p> <p>4 -- it shows a WAC price, and the reason for that</p> <p>5 change to that WAC price was to minimize prompt</p> <p>6 payment terms impact.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Are you aware of any other instances in</p> <p>10 which Roxane lowered its WAC prices on a general</p> <p>11 basis in order to minimize prompt payment terms</p> <p>12 impact?</p> <p>13 MR. REALE: Objection, form.</p> <p>14 THE WITNESS: We may have done it on</p> <p>15 individual products over the years. The only two</p> <p>16 -- I should say the biggest two I think we did</p> <p>17 that on were the -- the -- are the December of</p> <p>18 '97 and the March 16th of '98. Those were the --</p> <p>19 I think those were probably the big ones.</p> <p>20 The December one being like a pilot to</p> <p>21 work through our internal processes, make sure</p> <p>22 that we could administer it efficiently, and then</p>	<p style="text-align: right;">Page 108</p> <p>1 basic reasons that it was done, and whether it</p> <p>2 was because it was close to cost or not, it</p> <p>3 definitely had to do with the two percent versus</p> <p>4 the margin, our internal profit margin.</p> <p>5 MR. HEIDLAGE: Let's mark this as the</p> <p>6 next exhibit.</p> <p>7 (Exhibit Paoletti 004, document</p> <p>8 Bates stamped PAOLETTI 04387 through 390, marked</p> <p>9 for identification, as of this date.)</p> <p>10 BY MR. HEIDLAGE:</p> <p>11 Q. Ms. Paoletti, what I've just placed</p> <p>12 before you and marked as Exhibit Paoletti 004 is</p> <p>13 a document, a four-page document with Bates</p> <p>14 numbers PAOLETTI 04387 through 04390, and ask you</p> <p>15 whether you've seen that before.</p> <p>16 A. I don't recall, but I probably have. My</p> <p>17 name's on it, so I assume I've seen it before.</p> <p>18 Q. Do you recall participating -- your</p> <p>19 earlier testimony was that this was a time period</p> <p>20 before you started working for Ms. Waterer.</p> <p>21 Do you recall that you worked on the</p> <p>22 project for the WAC price adjustment in another</p>
<p style="text-align: right;">Page 107</p> <p>1 the rest of them done in March of the following</p> <p>2 year.</p> <p>3 BY MR. HEIDLAGE:</p> <p>4 Q. Okay. And just in general, can you</p> <p>5 describe what the purpose of the reductions in</p> <p>6 the WACs were in those instances?</p> <p>7 A. Those occurred prior to my starting to</p> <p>8 work for Judy. I may have been involved in some</p> <p>9 of the administrative roles that were required to</p> <p>10 implement it. It was my understanding that we</p> <p>11 did it because the -- the -- just what we talked</p> <p>12 about earlier, where the impact put many of our -</p> <p>13 - it was digging into the margin. The Roxane</p> <p>14 margin was fairly small as it was. So it was to</p> <p>15 minimize that 2 percent prompt payment term</p> <p>16 impact.</p> <p>17 Q. And is that because the actual prices</p> <p>18 to the customers were getting so low that the 2</p> <p>19 percent prompt payment discount was getting to be</p> <p>20 too large of a percentage of your actual margin?</p> <p>21 A. Again, I wasn't -- I couldn't speak to</p> <p>22 any individual product. I know -- I know the</p>	<p style="text-align: right;">Page 109</p> <p>1 capacity?</p> <p>2 A. I, for a period of time before I worked</p> <p>3 for Judy, did data entry and meeting planning and</p> <p>4 some other things. One of the -- one of the</p> <p>5 responsibilities I had was to -- to take the</p> <p>6 documents for source program and -- and marry the</p> <p>7 documents, the supporting documents up with</p> <p>8 checks that were mailed out and just track, you</p> <p>9 know, track, make sure everything was sent out.</p> <p>10 I also did some data entry into the</p> <p>11 system for the source programs, what the -- what</p> <p>12 the IT programs ran off of. And because I was</p> <p>13 working at the time for the director of national</p> <p>14 accounts and the director of sales, any</p> <p>15 administrative information that one of them would</p> <p>16 want to send out to a customer, I might help them</p> <p>17 compile.</p> <p>18 So in an administrative role, not -- to</p> <p>19 me, at the time this was very much like numbers</p> <p>20 into a system rather than the concept behind the</p> <p>21 numbers. Does that make sense?</p> <p>22 Q. Yes, it does. And I appreciate that.</p>

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<p style="text-align: right;">Page 110</p> <p>1 Now your testimony was that you at that 2 time had some function with regard to the source 3 programs? 4 A. I did data entry into the -- I think it 5 was the AS 400 at the time, but some computer 6 system that was run monthly. I think it was 7 monthly, or quarterly? I don't know. Monthly or 8 quarterly. And it would calculate rebates 9 associated with that program. 10 Q. And what kinds of data would you be 11 entering into that system, if you recall? 12 A. No, I don't. It's been 10 years ago. 13 Q. Now, did you have any participation in 14 WAC price -- price adjustments to minimize the 15 prompt pay discount after this 1998 time period? 16 A. Yeah, I should have been involved in 17 the -- let's go back through. By 2000, for the 18 azathioprine I would have been in that role. 19 Really anything after -- just about anything 20 after 1998, though for a period of time when I 21 first started, there were a few products that 22 Judy handled because they were larger products,</p>	<p style="text-align: right;">Page 112</p> <p>1 entry pieces of it. 2 In reading this document, it looks like 3 they did a financial assessment, and I believe 4 they did do a financial assessment of, you know, 5 what's the impact of shelf stock adjustments and 6 things like that that -- that we would incur when 7 we reduced the WAC. 8 Q. And do you know whether in connection 9 with any of the shelf -- strike that. 10 Do you know whether in connection with 11 any of the programs to reduce the WACs, Roxane 12 Laboratories ever came to the conclusion that its 13 net sales would be impacted by the WAC reduction? 14 A. I think that they were in the -- in the 15 March of '98, I think they were negatively 16 impacted. 17 Q. In net revenues? 18 A. Yes. I should say negatively impacted 19 in the short-term because the -- the purpose of 20 it, one of the purposes of it was in the long- 21 term to -- to lessen the impact of the prompt 22 payment terms. But in the initial</p>
<p style="text-align: right;">Page 111</p> <p>1 ipratropium. Now that I think about it, 2 azathioprine might have been one of them, too. 3 There were maybe a handful of products 4 that she remained direct control over, but I 5 would work in an administrative role for her and 6 help put together data and things like that. But 7 after -- after about '98, '99, I was involved in, 8 at some level, in most of them. 9 Q. In connection with any of the programs 10 that Roxane entered into in order to reduce its - 11 - strike that. 12 At any of the times that Roxane reduced 13 its WAC to minimize the prompt pay discounts, did 14 anyone from Roxane form any kind of an analysis 15 as to whether or not there was any loss revenue 16 to Roxane by lowering the WACs? 17 A. I don't know. I -- in the -- in the 18 WAC adjustment that was done in -- and just to 19 clarify, I can only speak to the years that I've 20 been there, so anything that happened prior to 21 maybe '90 -- '98, I guess, when I kind of 22 realized the conceptual rather than just data</p>	<p style="text-align: right;">Page 113</p> <p>1 implementation, I think there was a negative 2 impact to it. 3 Q. Let me show you a document which has 4 previously been marked as Exhibit Waterer 085 in 5 Ms. Waterer's deposition. And specifically, let 6 me direct your attention to the second page of 7 that document. And -- and I'm going to direct 8 your attention to the second full paragraph of 9 page 2 of Exhibit Waterer 085, and it starts, 10 "Impact on gross sales." 11 Do you see that? 12 A. Okay. Okay. 13 Q. That paragraph states in the last 14 sentence, does it not, that net sales are not 15 expected to be impacted by the WAC price change 16 that was being implemented in March of 1998? 17 MR. REALE: Object to form. 18 THE WITNESS: It says that the net 19 sales are not expected to be impacted. 20 BY MR. HEIDLAGE: 21 Q. Do you have any information that the 22 actual experience was different from what it was</p>

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<p style="text-align: right;">Page 194</p> <p>1 And, in fact, that's the first time I even 2 noticed it didn't have a Bates number. 3 BY MR. HEIDLAGE: 4 Q. Just note that, Ms. Paoletti, on the 5 second page in paragraph 8, there's a statement, 6 "If you have any questions, see Lesli Paoletti." 7 A. Yes. 8 Q. Take some time and just review the 9 procedures that are set out in Exhibit Paoletti 10 014. And my question to you will be whether you 11 recognize those as procedures that were in place 12 at Roxane Laboratories with regard to its rebate 13 agreements during the time that you've been 14 employed by Roxane. 15 A. Okay. What was your question again? 16 Q. My question is whether these are 17 procedures that you recognize as being procedures 18 with regard to the rebate agreements that were in 19 place and followed by Roxane Laboratories during 20 the time that you were employed by Roxane. 21 A. I don't remember. I do recall some of 22 these access files, but it seems to me that all</p>	<p style="text-align: right;">Page 196</p> <p>1 being reported by First DataBank during any 2 period? 3 A. This appears to be one of the reports 4 that they asked us to -- this is the type of 5 report that they would send us annually or 6 periodically and ask us to confirm the 7 information that's in it. And yes, it would have 8 listed any product of Roxane's that they had in 9 their database, I think, that they had listed as 10 active. 11 Q. Do you recall approximately the time 12 periods that First DataBank sent out these kinds 13 of reports for verification of the prices being 14 reported? 15 A. I don't. 16 Q. Was it -- was this one of the -- strike 17 that. 18 Was the response to this kind of report 19 part of your duties and responsibilities when you 20 first started working for Ms. Waterer? 21 A. You know, I know that there were a few 22 times when I verified the information in these.</p>
<p style="text-align: right;">Page 195</p> <p>1 of this occurred not too long before I moved into 2 the responsibilities with Judy. And there was a 3 database and process in the process of being 4 created when I was leaving, so I don't remember. 5 I mean, that's all I remember about that. 6 (Exhibit Paoletti 015, document 7 Bates stamped ROX-TX00860, marked for 8 identification, as of this date.) 9 BY MR. HEIDLAGE: 10 Q. Ms. Paoletti, what I've placed before 11 you and marked as Exhibit Paoletti 014 [sic] is a 12 one-page document with Bates number ROX-TX00860, 13 and ask you whether that's a document that you've 14 seen before. 15 A. Yes. 16 Q. Is the handwriting on it your 17 handwriting? 18 A. Yeah, I believe so, and it's -- just to 19 clarify, it's only one page of a much larger 20 document. 21 Q. Is the larger document the document 22 that contains all of Roxane's products that were</p>	<p style="text-align: right;">Page 197</p> <p>1 I don't know if I was the one that did it every 2 time. 3 Q. Okay. Was it your understanding that 4 First DataBank sent these out periodically? 5 A. Yes. 6 Q. And at least annually? 7 A. You know, I don't know if they sent 8 them out every year. You know, it seems like we 9 still periodically get these from either First 10 DataBank or one of the other compendias, and I 11 don't recall getting them every single year, but 12 I do remember getting them on several different 13 occasions, if that helps. 14 Q. I would just note that at the top of 15 Exhibit Paoletti 014 [sic] in the columns, 16 there's a column WHLNET? Do you know what that 17 refers to? 18 MR. REALE: It's Exhibit Paoletti 015. 19 MR. HEIDLAGE: Sorry, I had the wrong 20 number. It's Exhibit Paoletti 015. I'm sorry. 21 Thank you. 22 THE WITNESS: What I think we</p>

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<p style="text-align: right;">Page 198</p> <p>1 determined was that that was supposed to be the 2 WAC price. 3 BY MR. HEIDLAGE: 4 Q. Did you have any discussions with 5 anyone from First DataBank as to what WHLNET 6 referred to? 7 A. I don't recall. 8 Q. How did you determine that what that 9 referred to was the WAC price? 10 A. I probably verified the pricing that 11 they had listed with our WAC. 12 Q. Did you ever ask anyone from First 13 DataBank why the heading had the -- had NET at 14 the end of it? 15 A. No. 16 MR. REALE: I don't want to interrupt 17 your flow but, what do are thinking in today's 18 timing? It's 3:15 now. 19 MR. HEIDLAGE: I'm going to try to get 20 finished by 4:00. 21 MR. REALE: Okay. 22 (Exhibit Paoletti 016, document</p>	<p style="text-align: right;">Page 200</p> <p>1 If we are -- if we were launching a 2 product and we were late to market and I wanted 3 to see what AWP's were available for -- AWP's or 4 WAC's available for our competitors, I would go to 5 this database. 6 Q. Now, can you tell what the date that 7 this report was run -- let me strike that. 8 Can you tell what date this report was 9 run? 10 A. No. 11 Q. Are the company's products that are 12 referred to here, are these all Roxane's 13 products? 14 A. Judging by the leader code, the 00054. 15 That's our leader code, so that should be -- 16 these should be Roxane products. 17 Q. So the Price-Chek database is a 18 database that Roxane subscribed to? 19 A. Yes. 20 Q. And you could obtain the same kind of 21 information with regard to any manufacturer's 22 products; is that correct?</p>
<p style="text-align: right;">Page 199</p> <p>1 Bates stamped PAOLETTI 02176 through 188, marked 2 for identification, as of this date.) 3 BY MR. HEIDLAGE: 4 Q. Ms. Paoletti, what I've placed before 5 you and marked as Exhibit Paoletti 016 is a 6 document with the heading of PRICE-CHEK and it 7 has Bates numbers PAOLETTI 02176 through 02188. 8 And I would ask you whether that is a form of 9 document that you've seen before. 10 A. Yes. 11 Q. And what is it? 12 A. It is a report out of the Price-Chek 13 database. Again, I don't recall if it's Medispan 14 or if it's First DataBank. 15 Q. And what did you use the Price-Chek 16 database for? 17 A. Use it to pull up what competitors had 18 products actively listed in -- in First DataBank 19 or Medispan, which would tell me -- would give me 20 an idea of whether or not they were actively 21 selling the product. I would also maybe use it 22 for discontinuation dates.</p>	<p style="text-align: right;">Page 201</p> <p>1 A. Any manufacturer who had their products 2 listed. 3 Q. Were you able to have the database 4 search for products that were equivalent to 5 Roxane products that you put into the database? 6 A. I think you could look it up by product 7 name, and there were probably other criteria that 8 you could tell it to include or exclude. 9 (Exhibit Paoletti 017, document 10 Bates stamped PAOLETTI 09457 through 459, marked 11 for identification, as of this date.) 12 BY MR. HEIDLAGE: 13 Q. Ms. Paoletti, what I've placed before 14 you and marked as Exhibit Paoletti 017 is a 15 three-page document bearing Bates numbers 16 PAOLETTI 09457 through 09459, and I would ask you 17 to take a look at 09459. 18 A. Okay. 19 Q. And ask whether you can identify that 20 as -- if you can identify it as a form that 21 you've seen before. 22 A. Yes.</p>

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